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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT  
40-TON - BOX CARS, AAR CLASS XP

THIS AGREEMENT, entered into as of February 1, 1971, by and between AMERICAN REFRIGERATOR TRANSIT COMPANY, a New Jersey corporation, whose address is Missouri Pacific Building, 210 North 13th Street, St. Louis, Missouri, 63103, hereinafter referred to as "Lessor," and NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation, whose address is 8 North Jefferson Street, Roanoke, Virginia, 24011, hereinafter referred to as "Lessee," WITNESSETH:

R E C I T A L S:

The parties hereto have reached an understanding with respect to Lessor arranging for the conversion of certain of its existing insulated refrigerator cars in 91000 series, AAR Class RSM, to box cars, AAR Class XP, (hereinafter called the Cars) and the leasing of said Cars by Lessor to Lessee, and desire to set forth in writing their agreement with respect thereto.

NOW, THEREFORE, in consideration of the premises, the parties hereto agree:

1. Lease and Hire. Lessor hereby lets to Lessee and Lessee hereby hires from Lessor the Cars designated and described in Schedule "A" hereto. By mutual agreement additional Cars may be placed under lease

hereunder, in which event Schedule "A" shall be revised or supplemented accordingly and authenticated by the parties.

2. Term and Rental Rates. Each Car shall be under lease to Lessee from date released from Lessor's Shop at St. Louis, Missouri, until December 31, 1979.

On or before the 15th day of each month Lessee shall pay to Lessor for each Car under Lease during the preceding month, a daily rental rate of \$3.52.

Lessee shall collect all rentals, mileage, per diem or car hire charges payable from time to time by railroads.

Any demurrage, storage, detention, mileage, switching or freight charges incurred by any of such Cars while covered by this Lease, by virtue of provisions of tariffs on file with Interstate Commerce Commission, or as may be prescribed by the Association of American Railroads, or otherwise shall be assumed and paid by Lessee.

3. Taxes. In addition to the rentals herein provided, the Lessee shall, during the continuance of this Lease, promptly pay all taxes levied upon the use or operation of the Cars or the earnings arising therefrom, and shall promptly reimburse the Lessor for any additional taxes which Lessor may be required to pay solely by reason of this Lease or Lessee's use of the Cars hereunder; provided, however, that nothing herein shall require Lessee to reimburse the Lessor for net income, excess profits and similar taxes. Lessee shall pay ad valorem property taxes levied on the Cars and shall file all returns and reports in connection with such property taxes.

4. Marking and Numbering. Cars shall be marked with the reporting marks and numbers as shown in Schedule "A" hereto, and bear a stencil showing such Cars to be under lease to Lessee. Anything herein to the contrary notwithstanding, Car markings and lettering shall at all times conform to rules and practices of the Association of American Railroads and to all applicable laws, rules, regulations, orders, or decisions of any governmental authority having jurisdiction. Lessor's markings and numbers shall not be removed or obliterated. Lessee shall not allow the name of any person, association or corporation to be placed on any of the Cars as a designation which might be interpreted as indicating a claim of ownership thereof by any person, association or corporation other than Lessor.

5. Return of Cars. On termination of this Lease, Lessee will return the Cars to the Lessor at St. Louis, Missouri, or at such other point as Lessor and Lessee may then mutually agree upon; provided, however, that any Car loaded on or before the next to the last day of the Lease term may complete the loaded trip, and return of such Car to Lessor shall be made at the time such Car is released after unloading; and provided further, that each Car shall remain subject to the terms and conditions of this Lease until return thereof.

6. Repairs - Damaged and Destroyed Cars. Lessee shall bear all costs of maintaining the Cars, including parts and appurtenances

thereof, in good condition and repair, so as to conform to the then prevailing Code of Rules Governing the Condition of, and Repairs, to, Freight and Passenger Cars for the Interchange of Traffic, adopted by the Association of American Railroads.

Responsibility for loss or destruction of, or damage to, Cars or parts thereof or appurtenances thereto furnished under this Lease shall be fixed by said Rules of Interchange and said Rules shall establish the rights, obligations and liabilities of Lessor, Lessee and any railroad subscribing to such Rules and moving the Cars over its lines in respect of all matters to which those Rules relate; except, that Lessee shall reimburse Lessor for any loss incurred by reason of such destruction of or damage to Cars not recovered under the provisions of said Rules of Interchange.

As to Cars destroyed or damaged beyond repair, the Lease shall terminate as of the date of such destruction or damage. Cars withdrawn from the Lease at the request of Lessee, to avoid uneconomical expenditures for repairs, whether made necessary by ordinary wear and tear or any other reason, will be deemed to be "destroyed" and settlement therefor shall be made in accordance with provisions of said Rules of Interchange.

7. Replacements, Modifications and Alterations. The cost of any replacements, modifications, alterations, additions or improvements made to the leased Cars by or on order or at the direction of Lessee will be borne by Lessee.

8. Assignment - Use and Possession. Lessee will not assign, transfer, encumber or otherwise dispose of its leasehold interest under this Lease, the Cars or any part thereof, or sublet the Cars or change or permit to be changed or altered the lettering and/or numbering on the Cars, or any of them, without the consent of the Lessor in writing first obtained, except that Lessee may permit the use of the Cars by any subsidiary or affiliated railroad company or on lines of railroad other than Lessee's in the United States and Canada in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease. Lessee will not permit any encumbrances or liens, based upon any action or liability of Lessee, to be entered or levied upon any of the Cars.

9. Liability. Lessor shall not be liable for any loss of or damage to anything loaded in or on the Cars and make no representation as to the fitness or suitability of the Cars for use in any particular service. Lessee agrees to indemnify and save harmless Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and any expenses in connection therewith, including counsel fees, arising out of or as a result of the use and/or operation of the Cars during the term of this lease, or by reason of any default by Lessee under this Lease.

10. Cleaning and Servicing. Lessee shall indemnify and hold harmless the Lessor from any claims made against Lessor, as the Car Owner, or for any costs or penalties suffered by Lessor, as Car owner, resulting

from any failure to clean and service the Cars before loading.

11. Defaults and Remedies. If Lessee shall default in the performance or observance of covenants contained herein and to be performed or observed by Lessee, and such default shall continue for 10 days after notice by Lessor to Lessee, or there shall be filed by or against Lessee a petition in bankruptcy or for reorganization under any bankruptcy law, or there shall be a receiver appointed of any part of Lessee's property or Lessee shall make a general assignment for the benefit of creditors, then and in any such events Lessor, at its election, may terminate this Lease and repossess the Cars, and this Lease shall thereupon become and be terminated, or Lessor may repossess the Cars and relet the same or any part thereof to others for such rent or compensation and upon such terms as it may see fit; and if a sufficient sum shall not be thus realized after repaying all expenses of retaking and reletting the Cars and collecting the rentals thereof to satisfy amounts herein reserved or payable, Lessee agrees to satisfy and pay the deficiency from time to time upon demand. The obligation to pay such deficiency shall survive such termination and/or such retaking of the Cars to the end of the term of this Lease. Lessee shall, without expense to Lessor, assist Lessor in repossessing the Cars and shall for a reasonable time, if required by Lessor, permit storage of such Cars on trackage space owned or leased by Lessee, without cost to Lessor.

12. Obligations Suspended. In the event the performance, in whole or in part, of the obligations (other than for payment of money) of

either party under this Lease is hindered, interrupted, or prevented by war, strikes, lockouts, fire, acts of God, or by other similar or different acts of civil or military authorities, or by any cause beyond the reasonable control of the defaulting party, whether similar to the causes herein specified or not, the obligations of such party shall be suspended to the extent of and for the time that performance thereof is prevented or affected by such hindrance, interruption, or prevention, but due diligence shall be observed by such party in resuming performance of its obligations, after removal of the interrupting cause.

If any Car is withdrawn or diverted from the use of Lessee pursuant to regulation, order or direction of any Governmental agency having authority, such action shall not terminate this Lease, or affect the rights and obligations of the parties hereto, except that in every such case all rights and liabilities of the parties hereto as to any Car so withdrawn shall be suspended until such Car or replacement thereof shall have been made available to Lessee, and any such withdrawal, diversion or nonfurnishing shall not be deemed a breach of this Lease by either party.

13. Compliance with Laws and Regulations. This Lease is subject to all Federal, state and other laws, rules, regulations and ordinances which may now or hereafter affect, change or modify the terms or conditions hereof or render unlawful the performance of any of its provisions. Lessee shall comply with all Governmental laws, regulations and requirements and

with respect to the use, maintenance, and operation of each Car subject to this Lease.

14. Lessee's Rights. Lessee acknowledges and agrees that it has not obtained, and by the execution hereof it does not obtain, and by payments and performance hereunder it will not obtain, any title to the Cars nor any property right or interest, legal or equitable, therein, except solely as Lessee hereunder. Lessee shall keep the Cars free from any encumbrance or lien which may be equal to or superior to Lessor's rights or which may be a cloud upon or otherwise affect Lessor's title.

15. Prior Understandings. Prior understandings and agreements between the parties with respect to the Cars covered by this Lease are merged herein, and the rights of the parties in respect of such Cars shall be governed by this Lease.

16. Successors and Assigns. Covenants herein shall inure to or bind each party's successors and assigns.

IN WITNESS WHEREOF, the parties have duly executed this Lease as of the day and year first above written.

ATTEST:

By G M Lynch  
Assistant Secretary

AMERICAN REFRIGERATOR TRANSIT COMPANY

By Charles E. Fox  
President

ATTEST:

By Joseph Pakush  
Assistant Secretary JOSEPH PAKUSH

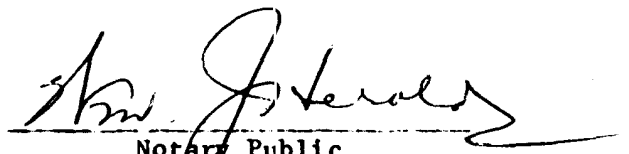
NORFOLK AND WESTERN RAILWAY COMPANY

By [Signature]  
Vice President-Operations



STATE OF MISSOURI )  
 ) SS  
 CITY OF ST. LOUIS )

On this 28<sup>th</sup> day of January, 1971, before me personally appeared Thos. E. Fox to me personally known, who, being by me duly sworn, says that he is the President of American Refrigerator Transit Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
 Notary Public  
 HEROLD

My Commission expires: February 10, 1974

Given under my hand and the Seal of St. Louis,  
 St. Louis, Missouri  
 Witness my hand and the Seal of St. Louis.

STATE OF VIRGINIA )  
                               ) SS  
 CITY OF ROANOKE     )

On this 25<sup>th</sup> day of March, 1971, before  
 me personally appeared, R. A. DUNLAP, to me personally known,  
 who, being by me duly sworn, says that he is Vice President-Operations  
 of Norfolk and Western Railway Company, that one of the seals affixed  
 to the foregoing instrument is the corporate seal of said corporation,  
 that said instrument was signed and sealed on behalf of said corpora-  
 tion by authority of its Board of Directors and he acknowledged that  
 the execution of the foregoing instrument was the free act and deed  
 of said corporation.

  
 Notary Public

My Commission expires: 3-31- 73

AMERICAN REFRIGERATOR TRANSIT COMPANY, LESSOR

NORFOLK AND WESTERN RAILWAY COMPANY, LESSEE

SCHEDULE "A"

TO

LEASE OF RAILROAD EQUIPMENT

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<u>Quantity.</u>	<u>Description.</u>	<u>Car Numbers.</u>
120	40-Ton Box Cars, AAR Class XP	N&W 49170 - 49289 both inclusive.

STATE OF MISSOURI )  
: SS  
CITY OF ST. LOUIS )

My name is **W. E. BURKE**, I am  
a Notary Public for the City of St. Louis and State of  
Missouri. I have compared the foregoing copy of a lease  
with the original document and I hereby certify that it is  
a true and correct copy in all respects.

  
\_\_\_\_\_  
Notary Public.

My Commission Expires -May 30, 1972